

# CRAVATH, SWAINE & MOORE

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INTERSTATE COMMERCE COMMISSION

November 9, 1984

Southern Pacific Transportation Company  
Lease Financing Dated as of October 1, 1984  
13-5/8% Conditional Sale Indebtedness  
Due February 1, 2000

Dear Mr. Bayne:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Southern Pacific Transportation Company, for filing and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of October 1, 1984, between The Connecticut Bank and Trust Company, National Association, as Trustee, and General Motors Corporation (Electro-Motive Division), and General Electric Company, as Builders; and

(b) Agreement and Assignment dated as of October 1, 1984, among General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent.

2. (a) Lease of Railroad Equipment dated as of October 1, 1984, between Southern Pacific Transportation Company, as Lessee, and The Connecticut Bank and Trust Company, National Association, as Trustee; and

*Handwritten signature: Glen Lawrence*

(b) Assignment of Lease and Agreement dated as of October 1, 1984, between The Connecticut Bank and Trust Company, National Association, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned agreements are as follows:

1. Agent:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Baltimore, Maryland 21203

2. Trustee-Lessor:

The Connecticut Bank and  
Trust Company, National Association,  
One Constitution Plaza,  
Hartford, Connecticut 06115

3. Builders-Vendors:

General Motors Corporation  
(Electro-Motive Division)  
La Grange, Illinois 60525

General Electric Company  
2901 East Lake Road  
Erie, Pennsylvania 16531

4. Lessee:

Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105

Please file and record the documents referred to in this letter and index them under the names of the Agent, the Trustee-Lessor, the Builders-Vendors and the Lessee.

The equipment covered by the aforementioned documents consist of the following:

8 GMC-EMD 3,000 h.p. Model GP40-2 diesel electric locomotives bearing the Lessee's identification numbers SP7240-SP7247, both inclusive, and 16 GE 3,750 h.p. Model 3630-D diesel electric locomotives bearing the Lessee's identification numbers SP7754-SP7769, both inclusive, and

also bearing the legend "Ownership Subject to a Security Agreement Filed with The Interstate Commerce Commission".

There is also enclosed a check for \$20 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich  
as Agent for  
Southern Pacific  
Transportation Company

James H. Bayne, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

Interstate Commerce Commission  
Washington, D.C. 20423

11/16/84

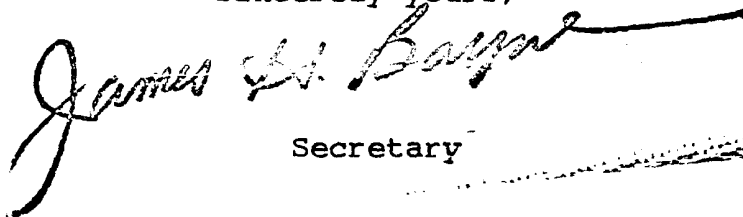
OFFICE OF THE SECRETARY

Laurance V. Goodrich  
Cravath Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/16/84 at 2:40pm and assigned re-recording number(s). 14475, 14476-A, 14476-B & 14476-C

Sincerely yours,

  
Secretary

Enclosure(s)

14476 X  
RECORDATION NO. .... Filed 1425

NOV 16 1984 -2 42 PM

INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 2044-798]

AGREEMENT AND ASSIGNMENT

Dated as of October 1, 1984

AMONG

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

GENERAL ELECTRIC COMPANY

AND

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
As Agent

---

---

AGREEMENT AND ASSIGNMENT dated as of October 1, 1984, among GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (collectively the "Builders" and severally the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof ("Participation Agreement"), a copy of which has been delivered to each Builder, said Agent, as so acting, together with its successors and assigns, being hereinafter called "Assignee".

WHEREAS each of the Builders and The Connecticut Bank and Trust Company, National Association, acting as Trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with The Bank of New York ("Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Trustee of the railroad equipment described in Annex B to the CSA ("Equipment"); and

WHEREAS the Trustee and SOUTHERN PACIFIC TRANSPORTATION COMPANY ("Lessee") have entered into a Lease dated as of the date hereof ("Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT ("Assignment") WITNESSETH: that in consideration of good and valuable consideration from the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Trustee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Trustee to such Builder under the CSA;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in paragraph 4.3(a) thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Trustee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Trustee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of such Builder to the Trustee with respect to the Equipment shall be and remain enforceable by the Trustee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to demand, sue for, collect and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA

set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Trustee that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Trustee under the CSA and the rights of the Lessee under the Lease; and each Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Trustee thereunder. Neither Builder will deliver any Equipment to the Trustee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing has occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Trustee or the Lessee arising out of a breach by such Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Trustee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's



Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. A Builder which shall execute and deliver this Agreement shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. The rights and obligations under this Agreement of each Builder are several in accordance with its interests and not joint. Accordingly, whenever in this Agreement a right is conferred or an obligation is imposed on a Builder, such right shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors and assigns. This Agreement shall be effective upon delivery of fully executed counterparts hereof to Messrs. Cravath, Swaine & Moore at their offices in New York, New York.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

\_\_\_\_\_  
Manager-Locomotive  
Marketing

[Corporate Seal]

Attest:

\_\_\_\_\_  
Attesting Secretary

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

\_\_\_\_\_  
Vice-President

[Corporate Seal]

Attest:


\_\_\_\_\_  
Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the  
assignment made by, the foregoing Agreement and Assignment  
is hereby acknowledged as of October 1, 1984.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
not in its individual  
capacity but solely in its  
capacity as Trustee,

by

  
\_\_\_\_\_  
Authorized Officer

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this                      day of                      1984, before me personally appeared                      to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of GENERAL MOTORS CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

COMMONWEALTH OF PENNSYLVANIA, )  
 ) ss.:  
COUNTY OF ERIE, )

On this       day of       1984, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Manager-Locomotive Marketing of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

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IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

\_\_\_\_\_  
Manager-Locomotive  
Marketing

[Corporate Seal]

Attest:

\_\_\_\_\_  
Attesting Secretary

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

\_\_\_\_\_  
Vice-President

[Corporate Seal]

Attest:


\_\_\_\_\_  
Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the  
assignment made by, the foregoing Agreement and Assignment  
is hereby acknowledged as of October 1, 1984.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
not in its individual  
capacity but solely in its  
capacity as Trustee,

by

  
\_\_\_\_\_  
Authorized Officer

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this                      day of                      1984, before me personally appeared                      to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of GENERAL MOTORS CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

COMMONWEALTH OF PENNSYLVANIA, )  
 ) ss.:  
COUNTY OF ERIE, )

On this       day of       1984, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Manager-Locomotive Marketing of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this            day of            1984, before me personally appeared            , to me personally known, who, being by me duly sworn, days that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires